

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 16-CV-00452-KG-KBM

No. 14-CR-02443-KG

ALEJANDRO SOTO-ROBLEDO,

Defendant.

**ORDER**

This matter is before the Court, *sua sponte* under rule 4(b) of the Rules Governing Section 2255 Cases. On May 16, 2016, Defendant filed a *pro se* Notice of Timely *Johnson* Retroactivity Claim and Preservation of Right [CV Doc. 1; CR Doc. 63], which sought sentencing relief under the United States Supreme Court's ruling in *Johnson v. United States*, 135 S. Ct. 2551 (2015). Because Defendant only may challenge his conviction and sentence by a motion under 28 U.S.C. § 2255, the Court informed Defendant that it intended to recharacterize his *pro se* notice as a motion to vacate, set aside, or correct sentence under § 2255 and afforded Defendant an opportunity to withdraw the motion or to amend it to add additional claims. [CV Doc. 2; CR Doc. 64] On June 29, 2016, Defendant filed a Notice and Motion to Vacate, Set Aside or Correct Sentence, which raises two additional claims: (1) lack of jurisdiction, and (2) ineffective assistance of counsel. [CV Doc. 3; CR Doc. 66]

In light of the foregoing, Defendant's *pro se* Notice of Timely *Johnson* Retroactivity Claim and Preservation of Right [CV Doc. 1; CR Doc. 63] will be recharacterized as a § 2255 motion. The Court will direct the United States to answer Defendant's motion, as supplemented by his Notice and Motion to Vacate, Set Aside, or Correct Sentence [CV Doc. 3; CR Doc. 66].

IT IS HEREBY ORDERED that the Defendant's *pro se* Notice of Timely *Johnson* Retroactivity Claim and Preservation of Right [CV Doc. 1; CR Doc. 63] is recharacterized as a § 2255 motion;

IT IS FURTHER ORDERED that the Clerk is directed to forward to the United States of America a copy of Defendant's recharacterized § 2255 motion [CV Doc. 1; CR Doc. 63] and Notice and Motion to Vacate, Set Aside, or Correct Sentence [CV Doc. 3; CR Doc. 66], and supporting papers and exhibits, if any, together with a copy of this Order;

IT IS FURTHER ORDERED that, within thirty (30) days of entry of this Order, the United States answer Defendant's recharacterized and supplemented § 2255 motion.

  
UNITED STATES CHIEF MAGISTRATE JUDGE